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Supreme Court, U.S.
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No. 97-463

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

TEXTRON LYCOMING RECIPROCATING ENGINE DIVISION, AVCO CORP.,

Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, INTERNATIONAL UNION AND ITS LOCAL 787,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY FOR PETITIONER

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REPLY FOR PETITIONER

As demonstrated in the petition, this case presents an important and recurring question over which the lower courts are divided. Respondent, while characterizing the question presented as "narrow" (Opp. at 6), does not dispute that the question is important and recurring. Instead, respondent argues that there is no conflict among the lower courts. This argument is based upon spurious distinctions that have no basis in either the relevant statute or the cases themselves.

1. Although respondents may be unable to find any conflict among the circuits, as the petition demonstrated (Pet. at 8, 11, 12), the courts of appeals have had no such problem. The Fourth Circuit noted the conflict two years ago when it held that Section 301 of the National Labor Relations Act, 29 U.S.C. § 185, "excludes from federal court jurisdiction suits challenging the validity of collective bargaining agreements" despite "numerous decisions by other circuits holding that federal courts do have subject matter jurisdiction to determine whether a collective bargaining agreement is valid." *Jones v. Union Carbide Chemicals & Plastics Co.*, No. 94-1145, 1995 WL 564404, at *2 & n.3 (4th Cir. Sept. 25, 1995).

Similarly, the Sixth Circuit recognized that its interpretation of Section 301, which "precludes district courts from determining the validity of collective bargaining contracts," is "adhered to by several circuits" and contradicted by other circuits "allowing district courts to determine the existence or validity of contracts under Section 301(a)." *Heussner v. National Gypsum Co.*, 887 F.2d 672, 676 n.2 (6th Cir. 1989). The Tenth Circuit has likewise recognized the conflict among the courts of appeals. *McNally Pittsburgh, Inc. v. International Ass'n of Iron Workers*, 812 F.2d 615, 617-19 (10th Cir. 1987).

The Third Circuit in this case also recognized the conflict, as it had earlier in *Mack Trucks, Inc. v. International Union, UAW*, 856 F.2d 579, 589 n.10 (3d Cir. 1988) (disagreeing with the holdings of the First and Fourth Circuits), *cert. denied*, 489 U.S. 1054 (1989). As the Third Circuit acknowledged below, while it interprets Section 301 to "apply equally to cases involving breach

of an acknowledged contract and those involving a dispute over the agreement's existence," Pet. App. 8a (quotation omitted), other circuits have "limited jurisdiction [under Section 301] to suits alleging a breach of a particular provision of a collective bargaining agreement." *Id.* at 7a (citing, among others, *A.T. Massey Coal Co. v. International Union, United Mine Workers*, 799 F.2d 142, 146 (4th Cir. 1986), *cert. denied*, 481 U.S. 1033 (1987), and *Hernandez v. National Packing Co.*, 455 F.2d 1252, 1253 (1st Cir. 1972)). Indeed, in the ruling below, the Third Circuit again specifically rejected the Fourth Circuit's holding in *A.T. Massey* that Section 301 does not apply "to an employer's suit challenging the existence of [a collective bargaining] agreement." Pet. App. 9a. Thus, the Third Circuit had no doubt that its decision was in the conflict with other court of appeals decisions.

2. Respondent asserts that there is no conflict with the decision below because "[n]ot a single court has reached a contrary conclusion." Opp. at 7. As the petition demonstrated (Pet. at 8-10), this is simply not true.

a. The Sixth Circuit's decision in *Heussner* squarely conflicts with the decision below. In *Heussner*, an employer reached an agreement with a union over the closing of a plant which superseded a prior collective bargaining agreement and guaranteed the workers' severance benefits. *See* 887 F.2d at 674. After the plant was sold, several workers became dissatisfied with the new agreement and sued. Much like respondent's claim here, the first count of their complaint "requested that the district court rescind the [new agreement] because [the employer] procured the agreement through fraud, duress, coercion, and intimidation." *Id.* at 675-76. In addition, as here, the workers alleged that the employer had failed to "supply relevant information" during bargaining. *Id.* at 676. Unlike the Third Circuit, however, the Sixth Circuit held that it had no jurisdiction over this claim because Section 301(a) does not "give district courts jurisdiction over the *validity* of collective bargaining contracts." *Id.*

Respondent does not attempt to distinguish the Sixth Circuit's ruling on this count of the complaint in *Heussner*. Instead, respondent ignores that count entirely and focuses instead upon two other counts of the complaint, "which stated claims of successor liability and breach of contract based on the terms of the [original collective bargaining agreement]." *Heussner*, 887 F.2d at 676; *see* Opp. at 9. Respondent does not, however, even begin to explain how the Sixth Circuit's treatment of the second and third counts in *Heussner* undermines the conflict created by that court's ruling on the first court. To the contrary, respondent appears to be trying to create the inaccurate impression that the *Heussner* did not reject an attempt to exercise federal court jurisdiction over a suit based upon a fraud-in-the-inducement claim.

b. The decision below is also in conflict with the Fourth Circuit's decision in *A.T. Massey*, which held that "a plaintiff must allege breach of an existing collective bargaining contract in order to avail itself of jurisdiction under § 301 of the Act." 799 F.2d at 146. Respondent tries to distinguish this decision on the ground that the employer in that case did not base its suit on "traditional doctrines of contract formation such as 'fraud in the inducement'" but instead relied upon "doctrines developed under the National Labor Relations Act." Opp. at 10. While it is true that the Massey Company and many of its affiliates sought a declaratory judgment based on the argument they were not "a common, or single, employer," and therefore were not bound by another affiliate's signing of a nation-wide collective bargaining agreement, 799 F.2d at 144, the Fourth Circuit's decision did not turn upon the particular issue presented but rather on the general lack of Section 301 jurisdiction over lawsuits where a breach is alleged. *See id.* at 146.

c. Finally, respondent's attempt to distinguish the First Circuit's decision in *Hernandez* is without merit. Respondent points out that *Hernandez* did not address "garden-variety issues of contract formation." Opp. at 8. Nothing, however, in the First Circuit's decision turned upon the traditional or non-traditional nature of the issue before it. Instead, the First Circuit

held that there was no jurisdiction over the plaintiffs' claim because Section 301 applies to "[s]uits for *violation* of contracts between an employer and a labor organization" and the plaintiffs did not seek "to vindicate their rights under the contract." *Hernandez*, 455 F.2d at 1253; *see also Mack Trucks*, 856 F.2d at 589 (noting that *Hernandez* "concluded that the plain language of § 301 bars jurisdiction to consider a suit concerning the existence of a collective bargaining agreement").

Courts applying this approach have found no jurisdiction where "garden-variety" contract formation defenses were asserted. *See Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1386 (6th Cir.) (finding no jurisdiction over claims that the contract lacked consideration and was unconscionable), *cert. denied*, 513 U.S. 871 (1994); *Corvallis Sand & Gravel Co. v. Hoisting & Portable Eng'r*, 419 P.2d 38, 40, 44 (Ore. 1966) (en banc) (finding no jurisdiction over claims of duress and coercion), *cert. denied*, 387 U.S. 904 (1967).

3. Notably absent from the opposition is any serious defense of the decision below. Although the petition demonstrated that the decision conflicts with the plain language of Section 301 (Pet. at 12-13), respondent does not attempt to derive the ruling below from the language of Section 301. Instead, respondent argues that there is no reason to permit a party to defend against a contract violation claim under Section 301 based upon fraud in the inducement while preventing that same party from bringing declaratory judgment actions under Section 301 on the same ground. Opp. at 7. In fact, there are at least two compelling reasons for doing so.

First, Section 301 dictates the different treatment. Section 301 does not confer jurisdiction over all suits of a contractual nature: it confers jurisdiction over "[s]uits for violation of contracts." 29 U.S.C. § 185(a). Thus, it is the plain language of the statute that draws the distinction between suits alleging contractual violations and suits that do not.

Second, this distinction protects the Board's remedial authority. When claims alleging contractual violations are bought under

Section 301, there is little risk of courts imposing a remedy that conflicts with the Board's remedy because the Board has no authority to remedy violations of contract. *See, e.g., Dowd Box Co. v. Courtney*, 368 U.S. 502, 510-12 (1962). When, however, a Section 301 claim is based upon fraud in the inducement, there is a significant risk of conflict because the Board can consider and, more important, remedy such conduct. Indeed, in this case, respondent filed its suit in federal court after the Board refused to seek the relief that respondent now seeks in federal court. *See* Pet. at 15 n.9. Avoiding the potential for such conflicts is a recognized — and compelling — reason for limiting the jurisdiction of the federal courts. *See, e.g., Garner v. Teamsters Local No. 776*, 346 U.S. 485, 498-99 (1953).

4. If there is any doubt over whether to grant the petition, this Court should invite the Solicitor General to express the view of the United States.

CONCLUSION

For the foregoing reasons, and those stated in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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